

**Before the**  
**Federal Communications Commission**  
**Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementing a Nationwide, Broadband,	)	PS Docket No. 06-229
Interoperable Public Safety Network in the 700	)	
MHz Band	)	
	)	
	)	

**Comments**

The State of New York ("the State") hereby submits comments in response to the Federal Communication Commission's ("the Commission") public notice dated August 14, 2009.

Responses are provided to specific questions included in Appendix A of the Commission's Public Notice which are applicable and relevant to New York.

**1. Timing**

New York State believes the Commission should act on these petitions prior to completing action on the rulemaking itself. Interoperable broadband communications is essential to first responders, as it has been 8 years since the events of September 11, 2001, and we unfortunately have not made progress towards implementing wide area, nationally interoperable 700MHz public safety broadband networks. Public safety needs to move to the next generation in communications capabilities.

New York has generated significant momentum across the state to move forward with a statewide-coordinated strategy to implement wireless broadband for public safety. This strategy includes support from many facets of the public safety community at both the state and local government levels. Non-action at this point or petition denial would serve to disrupt current momentum.

The Commission should immediately approve waivers from petitioners whose broadband initiatives are fully funded. Further, the Commission should conditionally grant approval to those petitioners whose funding is dependent upon the pending procurement of commercial, federal, state, regional, and/or local funding for the network. Conditional approval will provide the certainty necessary for petitioners to obtain required investment.

If petition approval is granted, New York can immediately begin detailed project implementation planning followed by project execution. Without petition approval, potential funding sources are at risk and project execution would be postponed indefinitely.

New York realizes that the Commission must still complete its rulemaking process and that plans to implement a national broadband network for public safety use could materialize. As a condition to New York's petition approval, the State is fully committed to ensuring the network built in New York would be completely integrated into any national network.

The State also encourages the Commission to resolve the outstanding issues with band alignment within the international treaty with Canada. Swift resolution of this issue is necessary for the State to be able successfully deploy broadband along the international border with Canada.

## **2. Authority to Operate**

The State believes that the Commission should utilize any licensing mechanisms available to it. However, any licensing mechanism that is ultimately chosen should ensure that the licensee (or sublicensee or lessee) complies with all national standards set forth by the Commission and the Public Safety Broadband Licensee ("PSBL"). The State believes the "path of least change" would be for the PSBL to either sublicense or provide authority to operate (under a contractual agreement) the spectrum to the states. The states could then enter in to the appropriate agreements in their respective states (e.g. contract, memorandum of understanding, legislative action) for use of the spectrum by political subdivisions of that state.

Granting the waivers clearly meets the FCC waiver standards and is in the public interest<sup>1</sup>. The Public Safety Spectrum Trust ("PSST"), National Public Safety Telecommunications Council ("NPSTC") and the Association of Public Safety Communications Officials ("APCO") support early deployments.

## **3. Existing Early Build Out Rules**

The Commission's current early build out rules currently require a "D block" winner and a Network Sharing Agreement ("NSA") in place. Neither is currently in place, and therefore the Commission would need to waive those requirements to permit the early build out. If a NSA was in place, the early build out is permitted by agreement of the PSBL. This is the heart of New York's waiver.

Early deployments should use a commercialized, standard communications air interface. Major public safety associations (NPSTC, APCO, PSST, and the National Emergency Number Association) recommend Long Term Evolution ("LTE") as that air interface. This will ensure that all network developers build networks that are compatible with each other and any future national network.

New York concurs with the concept of conditioning the grant of the waiver requests on meeting such standards. For example, requirements for network use could be put through a nationally recognized standard settings process, such as the APCO American National Standards Institute ("ANSI") standards

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<sup>1</sup> The public interest will be served by allowing the State, Regional or Local entity to engage in early deployments. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that (1) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest, or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative. Under either of these standards, the requested waiver allowing the petitioners to deploy a public safety broadband network in advance of the contemplated Shared Wireless Broadband Network is justified.

setting program. We also believe that such standards should be established as a condition of authorization to construct a system. This will provide for a common base for all petitioners to build from, ensuring there are no future costs to upgrade or convert to a future set of standards.

Additionally, the Commission must ensure that all international border issues (for example the United States – Canada border) are resolved and international agreements updated to provide for public safety broadband spectrum along the borders. Without spectrum in place along the border, some states will not have the incentive to construct a network – disadvantaging the citizens in those border areas as well as jeopardizing our Nation's border security.

#### **4. Narrowband Operations**

New York State no longer has narrowband operations in the spectrum proposed for use by the 700 MHz broadband waiver request. The State intends for any new 700 MHz deployments by the State to occur only in the new narrowband segment, subject to the limitations of the International Treaty with Canada.

#### **5. Sufficiency of Pleading**

New York State believes that its waiver request contains sufficient detail for the Commission to act. Our waiver request articulates a deployment strategy, which includes extensive involvement and collaboration with counties throughout the state, a funding strategy, and a designated technology standard- Long Term Evolution. We believe the level of detail provided is sufficient for the Commission to make an informed decision on our petition. Furthermore, New York believes it has adequately stated the advantages associated with jumpstarting the process through approval of the petition rather than waiting for a national plan to move forward. Finally, New York State believes it is in the public interest for the Commission to grant the waiver so the State can move forward without delay on improving interoperable communications for public safety.

#### **6. Interoperability**

It is essential to provide secure, state-of-the-art, interoperable communication capabilities to the public safety agencies. NPSTC efforts to develop recommendations for LTE based technical, governance, and operations standards to support interoperability will be an immense addition to already developed LTE standards and guidelines.

The early deployment ("proof of concept") will allow the Commission to adjust and perfect the rulemaking proceeding. The NPSTC task group will also benefit from these early deployments in development of recommendations for the LTE-based technology standardization amongst the public safety community.

One of the biggest benefits from early deployments would be the access by the Commission to regular reports and lessons learned from participants. The Commission can establish regular meeting-updates where participants can discuss and fine-tune practices used in the deployment of the system.

We agree that consideration should be given to elements listed in the Public Notice while granting waiver requests for early deployments of the broadband networks.



## **7. Mutually Exclusive Waivers**

Both the State of New York and New York City have recently submitted waiver requests to start deployment of a 700 MHz wireless broadband network for public safety. The New York City petition is geographically confined to the five boroughs comprising the city. The State petition covers the entire state.

While the State's petition currently overlaps with New York City's petition in terms of spectrum access, the State's network implementation strategy recognizes build autonomy for regional initiatives, including New York City. In other words, the State of New York fully supports New York City's desire to build, maintain, and operate their own 700 MHz wireless broadband network for public safety, assuming compliance with LTE technological requirements are instituted. Given both New York State and New York City are in agreement on this build approach, a resolution of the waiver overlap should be straightforward.

From an administrative perspective, there is merit to the argument that waivers covering large geographical areas are easier to manage than multiple smaller waivers for the same area. Given New York State recognizes and encourages regions within the state to pursue their own implementation projects, a single waiver for the entire state held by New York State would still allow New York City to meet their network build objective for their region.

## **8. Enforcement**

New York believes that if the Commission grants waivers conditional on a set of national standards, the Commission and the PSBL should share enforcement responsibilities. The PSBL should have "first line" responsibility for contractual enforcement of standards and policies, with unresolved issues being brought to the Commission for enforcement actions. New York believes this enforcement can, and should, include termination of the jurisdiction's authority to operate if they fail to comply with the national standards. However, "one bad apple" should not jeopardize the authority of other, compliant, jurisdictions to continue to operate their systems.

## **9. Permissible Users**

New York State recognizes that only "public safety services", which are defined to be for the sole or principal purpose of which is to protect the safety of life, health, or property, are appropriate under the terms of the license and as stated under Section 337. Therefore, New York will allow only users conducting public safety services to utilize the network.

## **10. Flow Mobile and North Dakota Petitions. Specifically with respect to the Flow Mobile and North Dakota Petitions, we seek comment on the following**

Flow Mobile is a commercial wireless company and under Section 337 would only qualify to provide public safety services if it is authorized to do so by a government entity whose primary mission is the provision of such a service as defined in Section 337. It may be the case that such authorization has been granted by a valid North Dakota government entity. However, even if such authorization has been granted, more explanation as to the proposed business model would be required to fully determine whether this waiver can be sought under the terms of Section 337.

Permitting broadband operations in narrowband spectrum is inconsistent with the Commission's intended use of the narrowband spectrum. Additionally, the use of this spectrum by both broadband and

narrowband is technologically inconsistent and creates a serious potential for interference where broadband and narrowband uses border or overlap.

While North Dakota is in control of its 700 MHz narrowband State License spectrum, this spectrum is interleaved with the General Use Spectrum under the control of Regional Planning Committees ("RPC"). The use of narrowband spectrum for broadband would prevent narrowband use by localities not only in Region 32 (if a RPC were to form and receive plan approval), but also by states and Regions (e.g. RPC22, RPC25, RPC38) surrounding North Dakota. Furthermore, outside users of the 700 MHz interoperability channels would be unable to utilize those channels in and surrounding North Dakota during a disaster response scenario. As North Dakota shares a northern border with Canada, the proposed use would also create international treaty issues.

New York firmly believes that the narrowband channels should be reserved for narrowband public safety use only and not subject to interference from broadband operations.

Finally, Flow Mobile has proposed a "4G-like" network, which appears to be close to, but not consistent with, emerging standards and trends within public safety communications. Most leading public safety organizations have endorsed LTE as the proposed technology platform for public safety wireless broadband networks. Flow Mobile's technological solution should be discouraged if it is not 100% compatible with the emerging national public safety standards. Permitting a non-standard solution could threaten national interoperability efforts.

Respectfully submitted,

  
**Melodie Mayberry-Stewart, Ph.D.**  
**New York State Chief Information Officer**  
**Director of the Office for Technology**

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New York State Chief Information Officer/  
Office for Technology  
Empire State Plaza  
P.O. Box 2062  
Albany, NY 12220

1-866-789-4638